

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIM ALEX EBERLINE,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 218731

Genesee Circuit Court

LC No. 96-053452-FH

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendant appeals as of right from plea-based convictions of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), unlawfully driving away a motor vehicle, MCL 750.413; MSA 28.645, larceny in a building, MCL 750.360; MSA 28.592, and fleeing and eluding, MCL 750.479a; MSA 28.747(1). Defendant was sentenced as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to prison terms of five to thirty years, three to seven and a half years, three to six years, and time served, respectively, following an adjudication that he violated probation. We affirm.

Defendant's sole claim on appeal is that his sentence was disproportionate. This Court's review is limited to determining whether the trial court abused its discretion by violating the principle of proportionality. An abuse of discretion will be found where the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense and the offender. *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998); *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998).

A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). "The crucial test for proportionality is not whether the sentence departs from, or adheres to, the recommended range under the sentencing guidelines, but whether it reflects the seriousness of the matter." *Castillo, supra*, at 447-448.

Sentencing requires consideration of a number of factors: (1) severity of the crime, (2) the nature of the crime, (3) circumstances surrounding the criminal behavior, (4) defendant's attitude toward his criminal behavior, (5) defendant's criminal history, (6) defendant's social and personal history, and (7) statutory sentencing limits. *People v Ross*, 145 Mich App 483, 495; 378

NW2d 517 (1985). Other relevant factors include charges that were dismissed as part of a plea bargain, *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994), the defendant's conduct after arrest, and the defendant's potential for rehabilitation. *People v Houston*, 448 Mich 312, 323; 532 NW2d 508 (1995). Those factors should be balanced with the following objectives: (1) reformation of the offender, (2) protection of society, (3) punishment of the offender, and (4) deterrence of others from committing like offenses. *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999) (citations omitted).

In light of all the facts and circumstances, including defendant's prior history which included incarceration following violation of probation, the nature of the instant offenses, the dismissal of armed robbery and felony-firearm charges, defendant's continual poor performance on probation, and the fact that he had exhausted all community programming options, we find that the trial court did not abuse its sentencing discretion.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White